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No. 89-478

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

STATE OF MARYLAND,

Petitioner,

v.

SANDRA ANN CRAIG,

Respondent.

On Petition For A Writ of Certiorari To The Court of Appeals of Maryland

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, THE NATIONAL COURT APPOINTED SPECIAL ADVOCATE ASSOCIATION, AND THE STATE OF ALASKA, OFFICE OF PUBLIC ADVOCACY, IN SUPPORT OF PETITIONER TOGETHER WITH BRIEF *AMICUS CURIAE*

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The National Association of Counsel for Children (NACC), the National Court Appointed Special Advocate Association (NCASAA), and the State of Alaska, Office of Public Advocacy (OPA), hereby respectfully move this court for leave to file a brief in this case as *amicus curiae* in support of Petitioner. The consent of the attorneys for Petitioner has been

obtained for the filing of a brief *amicus curiae* by the NACC, NCASAA and OPA. The consent of the attorneys for the Respondent was requested by counsel for the *amici curiae* but was refused.

The NACC is a voluntary, national membership organization concerned with the rights and interests of children who are the subjects of child protective, matrimonial and custody litigation. Established in 1977, the association has over 1,100 members in 50 states. The NCASAA is a nonprofit membership organization which advocates for the best interests of abused and neglected children, and supports the development and use of programs which recruit and train volunteers to serve as advocates for children in juvenile dependency proceedings. The OPA is the state agency which the Alaska State Legislature has designated to provide representation for abused and neglected children in juvenile proceedings and to represent children in contested custody and adoption proceedings.

The interests of these organizations goes beyond their general concern for the legal rights of children. The majority of the membership of these organizations is involved in representing children before courts in virtually every jurisdiction in the United States of America. Hence, the outcome of this case will have a tangible impact on the work and professional practice of the members of these organizations. The issues presented in this case are of national importance and are of deep concern to these organizations. Because NACC, NCASAA and OPA believe the case below was incorrectly decided, and because the case involves important questions which affect the legal rights of children, the NACC, NCASAA and OPA wish to join Petitioner in urging this court to grant a writ of

certiorari and review this case on the merits. Consequently, the NACC, NCASAA and OPA respectfully request this court grant leave to file our brief as *amicus curiae* in the form submitted with this motion.

Respectfully submitted,

/s/ Philip J. McCarthy, Jr.

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October 23, 1989

QUESTIONS PRESENTED

1. If the trial court has made individualized findings that a child witness would suffer severe emotional distress such that the child witness cannot reasonably communicate, is it constitutionally permissible to utilize at trial procedures which protect the child from face-to-face confrontation with the defendant?

2. Does the Sixth Amendment's Confrontation Clause require that a child witness initially be questioned in the defendant's presence prior to the trial court making individualized findings that protection of the child witness from face-to-face confrontation with the defendant is necessary at trial?

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BRIEF OF NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, NATIONAL COURT APPOINTED SPECIAL ADVOCATE ASSOCIATION, AND THE STATE OF ALASKA, OFFICE OF PUBLIC ADVOCACY, AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

This *amicus curiae* brief is submitted in support of the petition for a writ of certiorari. Petitioner has consented to the filing of this brief, and Respondent has refused such consent. A motion for leave to file this brief has been filed.

INTEREST OF THE AMICUS

The National Association of Counsel for Children (NACC) is a voluntary, national membership organi-

zation concerned with the rights and interests of children who are the subject of child protective, matrimonial, and custody litigation. Established in 1977, the association has over 1,100 members in 50 states. Membership is predominately lawyers and judges, but also includes pediatricians, social workers, child psychiatrists and psychologists, law enforcement officers, and private citizens. The association issues standards and guidelines on the representation of children, holds seminars on legal proceedings affecting children, prepares training and resource materials, and publishes a quarterly newsletter, "The Guardian".

The National Court Appointed Special Advocate Association (NCASAA) is a nonprofit member organization which advocates for the best interest of abused and neglected children, and supports the development, growth and continuation of programs which recruit and train volunteers to serve as advocates for children in juvenile dependency proceedings. Presently there are 377 court appointed special advocate (CASA) programs in 47 states in this country. The CASA concept has been endorsed by the National Council of Juvenile and Family Court Judges, the American Bar Association, the United States Department of Justice, and many other private and public organizations.

The State of Alaska, Office of Public Advocacy (OPA), is the state agency which has been designated by the Alaska State Legislature to provide legal representation for children as counsel and/or guardian ad litem in child abuse and neglect cases, child custody proceedings, and in criminal matters regarding the protection of child witnesses.

The interest of NACC, NCASAA and OPA goes beyond a generalized concern over the legal rights of

children. The members of NACC, NCASAA and OPA are involved in representing children throughout our country. Because we believe the case below was wrongly decided, and because it involves important questions of law which have not been, but should be, settled by this court, and because the interests of children are directly and adversely affected by this decision, we join the Petitioner in urging the Court to grant a writ of certiorari and review this case on the merits.

ARGUMENT

I. THE PROTECTION OF CHILD WITNESSES FROM FURTHER TRAUMA IS AN IMPORTANT STATE INTEREST WHICH JUSTIFIES, IN APPROPRIATE SITUATIONS, SOMETHING LESS THAN FACE-TO-FACE CONFRONTATION OF THE CHILD WITNESS BY THE DEFENDANT

This case presents an important issue which has not been resolved by this court's prior decision of *Coy v. Iowa*, 487 U.S. ___ , 108 S.Ct. 2798 (1988). Namely, is it constitutionally permissible to protect child witnesses from face-to-face confrontation with the defendant when there has been an individualized finding that testifying under the usual courtroom conditions would traumatize the child?

The problem of child abuse in our society is one of epidemic proportion. From 1976 until 1985, annual reports of child maltreatment increased dramatically, increasing nearly threefold from 669,000 to over 1.9 million. The American Association for Protecting Children, "Highlights of Official Child Neglect and Abuse Reporting, 1985", 3 (1987). Based upon data collected from 41 states and the District of Columbia, over 2.2

million reports of child abuse and neglect were filed in 1988. National Committee for Prevention of Child Abuse, "Child Abuse Fatalities Continue to Rise: The Results of the 1988 Annual Fifty-State Survey", 3 (1989). Besides the well-publicized revelation that physical and sexual abuse has increased, what is most shocking is that the number of child abuse fatalities continues to increase. Since 1985, the number of child abuse fatalities has increased over 36% with a minimum of three children a day being reported as fatal victims of child abuse. Id. at page 15.

While the number of children abused nationally has continued to rise, prosecution of the perpetrators of child abuse lags far behind. As this court has recognized, "[c]hild abuse is one of the most difficult crimes to detect and prosecute, in large part because there are often no witnesses except the victim." *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987). In response to this national epidemic, 26 states had enacted child witness protection laws approving the use of closed circuit television, and 34 states had enacted laws approving videotaping of a child's testimony, by the end of 1988. (*See* Appendix A.)

In the *Coy* decision, this court found an Iowa statute which authorized placement of a screen between the defendant and a child victim/witness at trial to be unconstitutional because the procedure was not supported by individualized findings but rather a legislatively imposed presumption of trauma to the child witness having face-to-face confrontation with the accused at trial. *Id.* at 2803. Since *Coy* was decided, state appellate courts have been divided in their interpretation of *Coy* regarding the constitutionality of child witness protection statutes and the appropriate

standard for determining individualized findings which constitutionally justify procedures to protect the child witness from face-to-face confrontation with the defendant at trial. The overwhelming majority of state court decisions since *Coy* have interpreted *Coy* to allow protection of the child witness, in appropriate situations, from face-to-face confrontation with the defendant at trial.[1]

While the majority of state appellate courts have upheld the constitutionality of child witness protection statutes, a minority of states have ruled otherwise. The Massachusetts Supreme Court has incorrectly determined that a Massachusetts statute allowing a child witness to testify through electronic means, outside the physical presence of the defendant, violates the defendant's constitutional right of confrontation. *Commonwealth v. Bergstrom*, 524 N.E.2d 366, 374-375 (Mass. 1988). The West Virginia Supreme Court has

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[1] *State v. Vincent*, 159 Ariz. 418, 768 P.2d 150 (Ariz. 1989) (en banc); *State v. Hoversten*, 437 N.W.2d 240 (Iowa 1989); *In the Interest of J.D.S.*, 436 N.W.2d 349 (Iowa 1989); *People v. Thomas*, 770 P.2d 1325 (Colo. Ct. App. 1988), (cert. granted by Colo. Sup. Ct. on March 13, 1989); *State v. Bonello*, 210 Conn. 51, 554 A.2d 277 (Conn. 1989), cert. denied, 109 S.Ct. 2103 (1989); *State v. Snook*, 210 Conn. 244, 555 A.2d 390 (Conn. 1989); *Glendening v. State*, 536 So.2d 212 (Fla. 1988), cert. denied, 109 S.Ct. 3219 (1989); *Brady v. State*, 540 N.E.2d 59 (Ind. Ct. App. 1989); *State v. Eaton*, 244 Kan. 370, 769 P.2d 1157 (Kan. 1989); *State v. Conklin*, 444 N.W.2d 268 (Minn. 1989); *State v. Crandall*, 231 N.J. Super. 124, 555 A.2d 35 (N.J. Super. A.D. 1989); *State v. Davis*, 229 N.J. Super. 66, 550 A.2d 1241 (N.J. Super. A.D. 1988); *State v. Tafoya*, 108 N.M. 1, 765 P.2d 1183 (N.M. App. 1988), cert. denied, 109 S.Ct. 1572 (1989); *Commonwealth v. Groff*, 548 A.2d 1237 (Pa. Super. 1988); *State v. Taylor*, 562 A.2d 445 (R.I. 1989); *State v. Thomas*, 150 Wis.2d 374, 442 N.W.2d 10 (1989).

also incorrectly concluded that the defendant's right of confrontation is violated when the child witness testifies at trial and the defendant is denied the opportunity of face-to-face confrontation. *State v. Murray*, 375 S.E.2d 405, 412 (W.Va. 1988).

The Louisiana Supreme Court has determined its child witness protection statute to be unconstitutional because of its nonspecific standard of "when justice so requires", which it determined to be a generalized legislative finding similar to the Iowa statute found to be unconstitutional by this court in *Coy*. While the Louisiana Supreme Court has found unconstitutional this section of the Louisiana statute, La. R.S. 15:283, it has failed to provide guidance to its legislature as to what is the acceptable constitutional standard it believes necessary in light of the *Coy* decision. *State v. Murphy*, 542 So.2d 1373, 1376 (La. 1989).

In the aftermath of the *Coy* decision, guidance from this court is necessary to insure that state legislatures draft constitutionally permissible statutes, and to further insure that state appellate courts are informed such laws are constitutionally permissible. In *Coy*, this court did not specifically address whether protection of child witnesses is a constitutionally permissible exception which justifies something less than face-to-face confrontation of a child witness by the defendant. Justice Scalia's opinion concluded: "We leave for another day, however, the question whether any exceptions exist. Whatever they may be, they would surely be allowed only when necessary to further an important public policy. . . . Our cases suggest, however, that even as to exceptions from the normal implications of the Confrontation Clause, as opposed to its most

literal application, something more than the type of generalized finding underlying such a statute is needed when the exception is not 'firmly . . . rooted in our jurisprudence'." *Id.* at 2803, quoting *Bourjaily v. United States*, 483 U.S. 171, 183 (1987). We respectfully urge this court to make this case the long-awaited "day" when this court clarifies for the states, once and for all, that protection of child witnesses is an important public policy which, in appropriate situations, justifies less than face-to-face confrontation with the defendant at trial.

II. THE CRAIG DECISION HAS INCORRECTLY INTERPRETED DECISIONS OF THIS COURT BY REQUIRING THAT BEFORE PROTECTION OF THE CHILD WITNESS FROM FACE-TO-FACE CONFRONTATION WITH THE DEFENDANT AT TRIAL IS CONSTITUTIONALLY PERMISSIBLE, A CHILD WITNESS MUST SUFFER SEVERE EMOTIONAL DISTRESS WHEN INITIALLY QUESTIONED IN THE DEFENDANT'S PRESENCE

This case involves a Maryland statute authorizing the use of closed circuit television for presentation of a child witness' testimony. The procedure authorized by the Maryland statute is significantly different from the Iowa statute reviewed in this court's *Coy* decision. The Iowa statute had a legislatively imposed presumption of trauma to the child witness. The Maryland statute requires that "the judge determines that testimony by the child victim in the courtroom will result in the child suffering serious emotional distress such that the child cannot reasonably communicate".[2] In the instant case, the trial court made particularized findings that the child witnesses would suffer serious

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[2] Md. Cts. & Jud. Proc. Code Ann. Sec. 9-102(a)(1)(ii) (Supp. 1988).

emotional distress such that they could not reasonably communicate. *Craig v. State*, 560 A.2d 1120, 1122 (Md. 1989).

The Maryland Court of Appeals rejected the individualized findings of the trial court and determined that Maryland's statutory phrase "testimony by the child victim in the courtroom" must be interpreted in light of *Coy* to mean that the child's inability to testify is related to being in the presence of the accused rather than the inability of the child to testify in the ordinary courtroom setting. *Id.* at 1126. Maryland's highest court interpreted *Coy* to require that " . . . the operative 'severe emotional distress' which renders a child victim unable to 'reasonably communicate' must be determined to arise, at least primarily, from face-to-face confrontation with the defendant. Thus we construe the phrase 'in the courtroom' as meaning, for Sixth Amendment and Article 21 confrontation purposes, 'in the courtroom in the presence of the defendant'." *Id.* at 1127. Based upon this statutory interpretation, the Maryland high court went on to require, as the appropriate procedure for determining whether or not protection of a child witness is permissible, that " . . . in the face of a constitutional challenge, Sec. 9-102 ordinarily cannot be invoked unless the child witness initially is questioned (either in or outside the courtroom) in the defendant's presence, and is found by the judge who presided at this procedure to be unable to 'reasonably communicate' because of 'serious emotional distress' produced by the presence of the defendant." *Id.* at 1127. In essence, this decision has interpreted *Coy* illogically to mandate that a child must actually suffer court imposed trauma in the presence of the defendant before protective measures can be implemented. The same misguided reasoning and result has been imposed by the Supreme Court of Rhode Island. *State v. Taylor*, 562 A.2d 445 (R.I. 1989). Thus, the decision of the Maryland Court of Appeals has mandated a procedure which defeats the important public policy considerations of the Maryland statute, i.e., protection of the child witness from trauma.

Maryland's high court interpreted *Coy* in a manner which conflicts with this court's decision of *Kentucky v. Stincer*, 482 U.S. 730 (1987). The *Stincer* decision held that a defendant's constitutional right of confrontation was not violated when the defendant was excluded from a hearing to determine a child witness' competency. The Maryland decision fails to recognize that a hearing to determine the necessity of protecting a child witness is parallel to, and indeed an extension of, a competency hearing. Like the competency hearing at issue in *Stincer*, a hearing to determine the necessity to protect a child witness does not involve questions about the substance of the witness' testimony, but involves collateral issues, i.e., the child's ability to testify. *See id.* at 740-741. A decision as to whether or not to utilize protective measures is one which is made by the judge and not by the jury. *See id.* at 742. The *Craig* decision thus, while finding it constitutionally permissible to protect child witnesses, has interpreted *Coy* and *Stincer* incorrectly and illogically.

III. CONFLICTING STATE STANDARDS FOR DETERMINING WHEN TO IMPLEMENT PROCEDURES TO PROTECT CHILD WITNESSES

The critical factors required under the Maryland statute are: (a) the child must be a victim, (b) the

trauma the child would experience must be due to the child's testifying in a courtroom setting, and this experience would result in (c) serious emotional distress, and (d) that the emotional distress would result in the child not being able to reasonably communicate.[3] The requirements of the Maryland statute differ greatly from those imposed by other states. A review of state statutes providing for protection of child witnesses reveals that the standards articulated by the numerous state statutes are widely diverse and desperately in need of clarification and guidance from this court.

One factor required by the Maryland statute is that the child witness be the victim of abuse, Sec. 9-102(a)(1). Other states have passed laws which provide for protection of children who are not victims of abuse but are witnesses.[4] The distinction between these two classes of child witnesses may be of constitutional importance if confrontation between the child and defendant is the critical factor in assessing trauma to the child versus trauma to the child based on the totality of circumstances.

This case also presents the court the opportunity to address the degree of emotional distress a child need suffer before it is constitutionally permissible to invoke child witness protection measures. Maryland and at least five other states require a finding of

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[3] *Ibid.*

[4] Alaska Stat. Sec. 12.45.046 (Supp. 1988); Ariz. Rev. Stat. Ann. Sec. 13-4251 (Supp. 1988); Del. Code Ann. tit. 11 Sec. 3511 (1987); Iowa Code Ann. Sec. 910 A.14 (West Supp. 1989); Ind. Code Ann. Sec. 35-37-4-8(d) (Burns Supp. 1989); Mass. Gen. Laws Ann. ch. 278 Sec. 16D (West Supp. 1989).

"severe" or "serious" emotional or mental distress to the child witness before protection of a child witness can be implemented[5] Other states require a finding by the court of emotional trauma to the child but a lesser degree than that of "serious" emotional or mental distress.[6] Florida, for example, requires only a finding that a child will suffer "moderate emotional or mental harm if required to testify in open court". *Glendening v. State*, 536 So.2d 212, 218 (Fla. 1988). Maryland and a minority of states also require that in addition to the child witness experiencing trauma, the trauma must result in the inability of the child to communicate.[7]

Further disagreement exists among the states over the proper evidentiary standard for determining child witness protection requests. The majority of states with child witness protection laws have

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[5] *Maryland*: Md. Cts. & Jud. Proc. Code Ann. Sec. 9-102(a) (Supp. 1988); *Georgia*: Ga. Code Ann. Sec. 81-1006.2 (Supp. 1989); *New Jersey*: N.J. Stat. Ann. Sec. 2A:84A-32.4 (West Supp. 1989); *New York*: N.Y. Crim. Proc. Law Secs. 65.00-.30 (McKinney Supp. 1989); *Ohio*: Ohio Rev. Code Ann. Sec. 2907.41 (1987); *Utah*: Utah Code Ann. Sec. 77-35-15.5 (Supp. 1989).

[6] e.g., *Florida*: Fla. Stat. Ann. Sec. 92.53 (West Supp. 1989); *Indiana*: Ind. Code Ann. Sec. 35-37-4-8(d) (Burns Supp. 1989); *Kentucky*: Ky. Rev. Stat. Ann. Sec. 421.350 (Baldwin Supp. 1989); *Missouri*: Mo. Ann. Stat. Sec. 491.680(2) (Vernon Supp. 1989); *New Hampshire*: N.H. Rev. Stat. Ann. Sec. 517:13-a (Supp. 1988); *Wisconsin*: Wis. Stat. Sec. 967.04(7)(a) (Supp. 1988).

[7] *Alaska*: Alaska Stat. Sec. 12.45.046(a) (Supp. 1988); *Arizona*: Ariz. Rev. Stat. Ann. Sec. 13-4253 (Supp. 1988); *Maryland*: Md. Cts. & Jud. Proc. Code Ann. Sec. 9-102 (Supp. 1988); *Ohio*: Ohio Rev. Code Ann. Sec. 2907.41 (1987); *Connecticut*: Conn. Gen. Stat. Ann. Sec. 54-869 (West Supp. 1989); *Kansas*: Kan. Stat. Ann. Sec. 22-3434 (1988); *Vermont*: Vt. R. Evid. 807.

not addressed the evidentiary standard to be utilized by their courts for determining the need to protect the child witness. A few states have determined that the degree of trauma required to justify protection of a child witness be established by "clear and convincing" evidence.[8] At least one state, New Hampshire, employs the "preponderance of the evidence" standard, N.H. Rev. Stat. Ann. Sec. 517:13-a (Supp. 1988). At the other extreme, the Massachusetts Supreme Court has determined that to allow a child witness to testify outside the courtroom, but in the presence of the defendant, the state must show by proof "beyond a reasonable doubt" that it is necessary to avoid severe and long-lasting emotional trauma to the child. *Commonwealth v. Bergstrom*, 524 N.E.2d 366, 376 (Mass. 1988).

We respectfully urge this court to review the decision below for the reasons set forth herein and those advanced by the petitioner, and to consider the important and previously unresolved questions regarding protection of child witnesses.

CONCLUSION

Given the magnitude of child abuse in America and the trauma which child witnesses experience when called to testify, we urge this court to determine that it is indeed a compelling state interest, acting as parens patriae, to implement provisions for safeguarding the welfare of child witnesses. Society's sense of com-

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[8] *State v. Eaton*, 769 P.2d 1157, 1167-1168 (Kan. 1989); *State v. Taylor*, 562 A.2d 445,453 (R.I. 1989); *State v. Crandall*, 555 A.2d 35, 39 (N.J. Super. A.D. 1989); *State v. Bonello*, 554 A.2d 277, 284-285 (Conn. 1989).

passion tells us that we should do what we can to protect a child witness "from further victimization in a legal system which is committed to protecting human rights". *State v. Gilbert*, 326 N.W.2d 744, 746 (Wis. 1982). For these reasons, and those advanced by the petitioner, we respectfully request this court grant petitioner's request to issue a writ of certiorari to the Court of Appeals of Maryland.

Respectfully submitted,

PHILIP J. MCCARTHY, JR.
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State of Alaska, Office of
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National Court Appointed Special
Advocates Association
As *Amicus curiae*

October 23, 1989

APPENDIX

APPENDIX A

PROVISIONS FOR USE OF CLOSED CIRCUIT TELEVISION, ONE-WAY SCREENS OR ONE-WAY MIRRORS

1. Alabama: Ala. Code Sec. 15-25-3 (Supp. 1988)
2. Alaska: Alaska Stat. Sec. 12.45.046 (Supp. 1988)
3. Arizona: Ariz. Rev. Stat. Ann. Sec. 13-4253 (Supp. 1988)
4. California: Cal. Penal Code Sec. 1347 (West Supp. 1989)
5. Connecticut: Conn. Gen. Stat. Sec. 54-869 (West Supp. 1989)
6. Florida: Fla. Stat. Ann. Sec. 92.54 (West Supp. 1989)
7. Georgia: Ga. Code Ann. Sec. 81-1006.2 (Supp. 1989)
8. Hawaii: Haw. R. Evid. 616
9. Indiana: Ind. Code Ann. Sec. 35-37-4-8 (Burns Supp. 1989)
10. Iowa: Iowa Code Ann. Sec. 910.14 (West Supp. 1989)
11. Kansas: Kan. Stat. Ann. Sec. 22-3434 (1988)
12. Kentucky: Ky. Rev. Stat. Ann. Sec. 421.350 (Baldwin Supp. 1989)
13. Louisiana: La. Rev. Stat. Ann. Sec. 15:283 (West Supp. 1989)
14. Maryland: Md. Cts. & Jud. Proc. Code Ann. Sec. 9-102 (Supp. 1988)
15. Massachusetts: Mass. Gen. Laws Ann. ch. 278, Sec. 16D (West Supp. 1989)
16. Minnesota: Minn. Stat. Ann. Sec. 595.02 (West Supp. 1988)

17. Mississippi: Miss. Code Ann. Sec. 13-1-405 (Supp. 1987)
18. New Jersey: N.J. Rev. Stat. Sec. 2A:84A-32.4 (West Supp. 1989)
19. New York: N.Y. Crim. Proc. Law Secs. 65.00-.30 (McKinney Supp. 1989)
20. Ohio: Ohio Rev. Code Ann. Sec. 2907.41 (Supp. 1987)
21. Oklahoma: Okla. Stat. Ann. tit. 22 Sec. 753 (West Supp. 1989)
22. Pennsylvania: Pa. Cons. Stat. Ann. tit. 42 Sec. 5985 (Purdon Supp. 1989)
23. Rhode Island: R.I. Gen. Laws 11-37-13.1 (Supp. 1988)
24. Texas: Tex. Crim. Proc. Code Ann. art. 38.071 (Vernon Supp. 1989)
25. Utah: Utah Code Ann. Sec. 77-35-15.5 (Supp. 1989)
26. Vermont: Vt. R. Evid. 807

PROVISIONS FOR USE OF VIDEOTAPED TESTIMONY

1. Alabama: Ala. Code Sec. 15-25-2 (Supp. 1988)
2. Arizona: Ariz. Rev. Stat. Ann. Sec. 13-4253 (Supp. 1988)
3. Arkansas: Ark. Code Ann. Sec. 16-44-203 (1987)
4. California: Cal. Penal Code Sec. 1346 (West Supp. 1989)
5. Colorado: Colo. Rev. Stat. Sec. 18-3-413 (1986)
6. Connecticut: Conn. Gen. Stat. Ann. Sec. 54-869 (West Supp. 1989)
7. Delaware: Del. Code Ann. tit. 11, Sec. 3511 (1987)
8. Florida: Fla. Stat. Sec. 92.53 (West Supp. 1989)
9. Hawaii: Haw. R. Evid. 616

10. Illinois: Ill. Ann. Stat. ch. 38, para. 106A-2 (Smith-Hurd Supp. 1989)
11. Indiana: Ind. Code Ann. Sec. 35-37-4-8 (Burns Supp. 1989)
12. Iowa: Iowa Code Ann. Sec. 910A.14 (West Supp. 1989)
13. Kansas: Kan. Stat. Ann. Sec. 22-3434 (1988)
14. Kentucky: Ky. Rev. Stat. Ann. Sec. 421.350 (Baldwin Supp. 1989)
15. Massachusetts: Mass. Gen. Laws Ann. ch. 278 Sec. 16D (West Supp. 1989)
16. Minnesota: Minn. Stat. Ann. Sec. 595.02 (West Supp. 1988)
17. Mississippi: Miss. Code Ann. Sec. 13-1-407 (Supp. 1987)
18. Missouri: Mo. Ann. Stat. Secs. 491.680-687 (Vernon Supp. 1989)
19. Montana: Mont. Code Ann. Secs. 46-15-401 to -403 (1987)
20. Nevada: Nev. Rev. Stat. Ann. Secs. 174.227 and 174.229 (1986)
21. New Hampshire: N.H. Rev. Stat. Ann. Sec. 517.13-a (Supp. 1988)
22. New Mexico: N.M. Stat. Ann. Sec. 30-9-17 (1986)
23. Ohio: Ohio Rev. Code Ann. Sec. 2907.41 (Baldwin Supp. 1987)
24. Oklahoma: Okla. Stat. Ann. tit. 22 Sec. 753 (West Supp. 1989)
25. Pennsylvania: Pa. Cons. Stat. Ann. tit. 42 Sec. 5984 (Purdon Supp. 1989)
26. Rhode Island: R.I. Gen. Laws Sec. 11-37-13.1 (Supp. 1988)

27. South Carolina: S.C. Code Ann. Sec. 16-3-1530(G) (1984)
28. South Dakota: S.D. Code Ann. Sec. 23A-12-9 (1988)
29. Tennessee: Tenn. Code Ann. Sec. 24-7-116 (Supp. 1988)
30. Texas: Tex. Crim. Proc. Code Ann. art. 38.071 (Vernon Supp. 1989)
31. Utah: Utah Code Ann. Sec. 77-35-15.5 (Supp. 1989)
32. Vermont: Vt. R. Evid. 807
33. Wisconsin: Wis. Stat. Sec. 967.04(7) (Supp. 1988)
34. Wyoming: Wyo. Stat. Sec. 7-11-408 (1987)